

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 24th day of April, 1997, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 22918

**Gregory M. Tobin, an active member of The
West Virginia State Bar, Respondent**

MAY - 7

On a former day, to-wit, April 14, 1997, came the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Dwane L. Tinsley, its chairperson, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition recommending that respondent, Gregory M. Tobin, (1) be reprimanded; (2) perform one hundred hours (100) of community service within one hundred twenty (120) days from the entry of this order through the Land of Lincoln Legal Services program in accordance with a comprehensive plan supervised by Joseph Bartolyk, Esq., Land of Lincoln Legal Services, (618) 462-0036; and (3) reimburse the Lawyer Disciplinary Board for the costs and expenses incurred in the investigation of this matter.

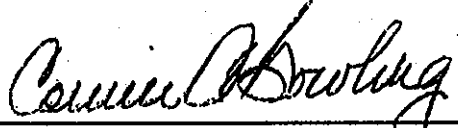
There having been heard neither concurrence nor objection from either the petitioner or the respondent, the Court doth hereby approve said recommendation. It is therefore ordered that the respondent, Gregory M. Tobin, be, and he hereby is, publicly reprimanded. It is further ordered that the respondent perform one hundred hours (100) of community service within one hundred twenty (120) days from the entry of this order through the Land of Lincoln Legal Services program in accordance with a comprehensive plan supervised by Joseph Bartolyk, Esq., Land of Lincoln Legal Services, (618) 462-0036.

It is finally ordered that the respondent reimburse the Lawyer Disciplinary Board for the costs and expenses incurred in the investigation of this matter.

Service of an attested copy of this order upon all parties shall constitute sufficient notice of the contents.

A True Copy

Attest:


Interim Clerk, Supreme Court of Appeals

**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

**In re: Gregory M. Tobin, a member of
The West Virginia State Bar**

**I.D. No. 92-01-279
Sup. Ct. No. 22918**

**REPORT AND RECOMMENDED DECISION
OF THE HEARING PANEL SUBCOMMITTEE**

The Hearing Panel Subcommittee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, Mitigation, and Recommended Discipline of the parties in this matter, does find them to be acceptable and hereby adopts the same, as follows:

1. Gregory M. Tobin (hereinafter "Respondent") is a licensed member of the West Virginia State Bar who practices in East Alton, Madison County, Illinois, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to The West Virginia State Bar on December 1, 1987.
2. Respondent has been licensed to practice law in Illinois since 1986. In May of 1986, he began employment as an associate with the Illinois firm of Pratt and Callis, P.C. (hereinafter "the law firm"). He became a partner in the firm in 1993, now called Pratt, Bradford, Tobin & Alexander, P.C.
3. Mark S. Smith, (hereinafter "Complainant") sustained a work-related injury on February 21, 1987 while working for Norfolk and Western Railway Company in West Virginia. An acquaintance of his recommended that he contact the law firm, because the firm represented the acquaintance.

4. On or about April 2, 1987, Complainant telephoned the law firm and spoke with attorney Paul Pratt. As the result of that conversation, an investigator for Pratt & Callis traveled to Complainant's home in Virginia on April 3, 1987 with a representation agreement entitled, "Authority to Represent." Complainant signed the agreement that day.

5. The "Authority to Represent" also contains the stamped signature of Respondent, as the attorney accepting. Respondent represents that the signature is from a stamp and was placed on the contract after the document was brought back to the firm. Who signed such documents was not necessarily indicative of who was assigned the case.

6. At various times, Respondent, Paul Pratt, David Jones, David Hylla and Doug Forsythe worked on Complainant's case. In March of 1989, Respondent filed a civil action in the Circuit Court of Brooke County on behalf of Complainant.

7. Complainant and his wife both recall that during the initial meeting with the investigator on April 3, 1987, he informed them that the law firm could provide loans for living expenses, the repayment of which would come from any recovery.

8. The law firm had been making loans to clients since 1971. It is estimated that before the Illinois Attorney Registration and Disciplinary Commission completed proceedings against lawyers for making such loans, the law firm had made 1,800 loans. An Illinois ethics inquiry was opened against Mr. Pratt for making loans to clients in 1988. A hearing was held and the Hearing Board recommended that Mr. Pratt's law license be suspended for three years. Paul Pratt died April 1, 1993. Following his

death, the disciplinary proceeding was dismissed as moot by the Review Board on May 7, 1993.¹

9. Complainant was first loaned \$288.00 on April 27, 1987 for travel expenses to visit the law firm. Mr. Smith does not have a current recollection of which attorney he spoke with initially about loaning him money.

10. By January 7, 1988, Complainant had been loaned \$3,250.00. Thereafter, Complainant arranged with the law firm to borrow \$1,200 to \$1,500 every month, as more fully set forth in the document entitled "Loans Receivable Mark Stephen Smith As of 5/5/92", attached as Exhibit 1 to this Report.

11. According to the loan documents, the loans were structured on paper in several ways. Some documents show that Pratt and Callis provided money directly to Complainant who signed a promissory note. Other documents show that money was provided by either Magna Bank of Granite City, Illinois or Granite City National Bank. For those loans provided by banks, sometimes Pratt and Callis used a line of credit in the firm's name to make loans to clients. Other times Mr. Smith and the law firm would be listed as co-borrowers. The law firm purchased loan insurance and debited Mr. Smith's account with the purchase price.

12. The loans, with the exception of a small amount of money loaned directly by the firm, were made through Magna Bank and were co-signed by the firm.

13. The Smiths began to depend upon the loans to meet their living

¹ The Hearing Board's recommended sanction would not necessarily have been imposed since the Review Board did not adopt recommendations of suspension for other similar disciplinary cases. See paragraph 28 *infra*.

expenses. On some occasions when the monthly installments were late, Mr. Smith asked Respondent about the delay. Respondent referred Mr. Smith to Mr. Lamb.

14. Letters renewing the loans were sent to Complainant by Mr. Lamb.

15. According to loan documents of November 5, 1990, the annual percentage rate of interest was 13.996%. If the loan was not paid at maturity, November 5, 1991, the balance would then accrue at the rate of 19.000% per year. The interest was to go to the bank, not the law firm.

16. On July 15, 1991, Mr. Smith discharged the law firm of Pratt and Callis.

17. By November 5, 1991, Complainant owed the law firm and Magna Bank a total of \$104,766.00, which represented \$91,900.00 in principal and \$12,866.00 in interest.

18. Complainant, because of the loans and other financial difficulties, filed Chapter Seven bankruptcy. Another lawyer from the firm took steps to try and recover the loan amounts through the bankruptcy process.

19. The firm not only co-signed bank loans for Mr. Smith, but also for at least three other West Virginia residents. Respondent was aware of one of these other loans.

20. In January 1995, Respondent's firm discontinued making or guaranteeing new loans. Prior to that, however, the firm did continue to make such loans to Mr. Smith and others during the pendency of a disciplinary inquiry begun against Mr. Pratt in 1988.

PROPOSED CONCLUSIONS OF LAW

21. Respondent was aware of the firm's practice of making client loans and was specifically aware that such loans were being made to his client, Mr. Smith. Mr. Smith discussed the loans with Respondent, even though Respondent referred the client to the comptroller for information. Respondent was also aware that one other client in West Virginia litigation was being loaned money by the firm. Although Respondent did not originate the firm's policy of loaning money to clients and did not specifically arrange for Mr. Smith's loan, Respondent nevertheless violated Rule 8.4(a) of the Rules of Professional Conduct:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

The rule violations which Respondent assisted others to commit are set forth below.

22. The lawyers who specifically provided financial assistance to the Smiths prior to January 1, 1989 to Complainant in connection with pending litigation not being court costs and expenses of litigation, violated DR 5-103(B) of the Code:

DR 5-103 Avoiding Acquisition of Interest in Litigation.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

23. To the extent these loans continued after January 1, 1989, Rule 1.8(e) of

the Rules of Professional Conduct was violated:

Rule 1.8. Conflict of Interest: Prohibited Transactions.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

24. The lawyers responsible for entering into a business transaction of loaning money to the Smiths prior to January 1, 1989, violated DR-5-104(A) of the Code:

DR 5-104 Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

25. These loans, to the extent they were made after January 1, 1989, violated Rule 1.8(a) of the Rules of Professional Conduct:

Rule 1.8. Conflict of Interest: Prohibited Transactions.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

MITIGATION

26. Respondent has no prior disciplinary record or complaints.
27. Before Respondent joined Pratt and Callis, P.C. as a new associate in May of 1986, the firm had an established policy of making client loans.
28. The Supreme Court of Illinois, in January, 1995, issued censures against four attorneys, Glenn E. Bradford,² Morris B. Chapman, Terrence V. O'Leary and Robert W. Bosslet, Jr., and issued a public reprimand against Melissa Chapman Rheinecker, for making client loans in practices similar to those of Pratt and Callis, P.C. The Illinois Supreme Court imposed censures and a reprimand, instead of more stringent discipline, because there had been no clear and settled precedent in Illinois concerning the issue.
29. In January 1995, Respondent's firm discontinued making or guaranteeing new loans.
30. There was no evidence of dishonest motive behind Respondent's misconduct.
31. Respondent has been cooperative in these proceedings.
32. No evidence has been produced of any bad character or reputation of Respondent.
33. No evidence has been supplied that the misconduct involved any

² Mr. Bradford was a member of Chapman and Associates until he resigned in 1993 to join Pratt and Callis and to take over Paul Pratt's practice. The Illinois disciplinary complaint was filed against Bradford for loans made at Chapman and Associates. However, as a condition of purchasing the Pratt firm, Bradford co-signed for existing loans to Pratt's clients. He also co-signed loans for new clients.

dishonesty, deceit, fraud or misrepresentation.

PROPOSED RECOMMENDED DISCIPLINE

34. Respondent will be issued a public reprimand, shall perform not less than 100 hours of community service through the Land of Lincoln Legal Services program and shall pay all the costs of this proceeding.

35. The Respondent shall perform the community service pursuant to the following comprehensive plan:

a.) Respondent shall provide 100 hours of community service representing indigent persons in the State of Illinois in matters involving divorce, child abuse or juvenile proceedings in an area where a need is indicated.

b.) Respondent shall accurately record his time to the nearest 0.25 hour and weekly report said time to his supervisor and to Disciplinary Counsel.

c.) Any *pro bono* legal matter undertaken by Respondent which remains uncompleted by the exhaustion of his 100 hour requirement shall nevertheless be brought to conclusion by him.

d.) Respondent's supervisor will be as follows:

Joseph Bartolyk
Land of Lincoln Legal Services
(618) 462-0036

e.) Respondent's supervisor has agreed to monitor Respondent's service and shall certify its completion at the conclusion of the *pro bono* service.

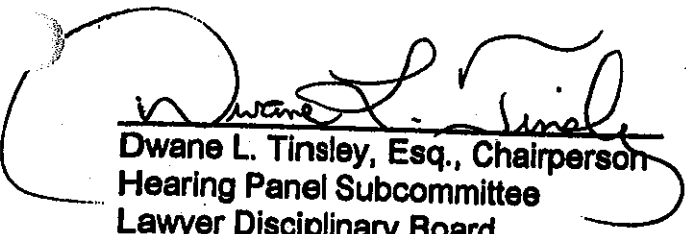
f.) Respondent shall have 120 days from entry of the Supreme Court order imposing discipline to complete said 100 hour requirement; provided, however,

that Respondent's supervisor will attempt to concentrate said community *pro bono* legal service so as to fully occupy Respondent's work week until the requirement is met.

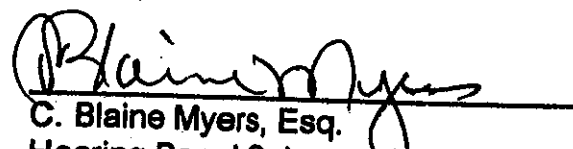
g.) At the completion of the community service and upon notification of such by Respondent's supervisor, Disciplinary Counsel shall report to the Supreme Court of Appeals that the community service obligation is discharged and shall notify the Respondent's counsel of such report.

36. Respondent represents that the law firm ceased making initial loans to new clients and ongoing loans to current clients in January 1995. Based upon this representation, no other disciplinary action will be taken against Respondent for any loans made to other clients of the firm prior to January 1995.

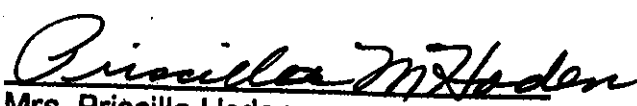
The above is the recommended decision of the Hearing Panel Subcommittee.


Dwane L. Tinsley, Esq., Chairperson
Hearing Panel Subcommittee
Lawyer Disciplinary Board

3/21/97
DATE


C. Blaine Myers, Esq.
Hearing Panel Subcommittee
Lawyer Disciplinary Board

4/8/97
DATE


Mrs. Priscilla Haden
Hearing Panel Subcommittee
Lawyer Disciplinary Board

3/31/97
DATE

**LOANS RECEIVABLE
MARK STEPHEN SMITH
AS OF 5/5/92**

<u>CLIENT DRAWS</u>	<u>CK #</u>	<u>AMOUNT</u>	
04-27-87	3023	288.00	
07-13-87	2791	600.00	
10-13-87	4689	338.00	
10-19-87	3040	400.00	
12-04-87	3155	600.00	
01-07-88	5533	1,024.00	
	SUB-TOTAL	\$3,250.00	
01-27-88	124206	1,200.00	
02-03-88	5793	700.00	
02-22-88	3313	400.00	
02-26-88	125310	1,200.00	
03-24-88	126543	1,200.00	
04-27-88	127848	1,200.00	
05-26-88	129306	1,200.00	
07-11-88	131172	1,200.00	
07-20-88	131598	1,200.00	
07-20-88	131640	1,200.00	
09-01-88	1052	1,200.00	
10-01-88	1185	1,200.00	
11-01-88	1300	1,200.00	
12-01-88	1413	1,200.00	
12-08-88		53.01	Insurance
01-01-89	1522	1,200.00	
02-01-89	1598	1,200.00	
03-01-89	1703	1,200.00	
03-31-89	1817	1,200.00	
05-01-89	1897	1,500.00	
05-01-89	1923	200.00	
06-09-89	2009	700.00	
06-12-89	2025	800.00	
06-12-89	2026	1,872.82	Interest
06-30-89	2091	1,500.00	
08-01-89	2174	1,500.00	
09-01-89	2254	1,500.00	
09-26-89	2278	1,500.00	
11-01-89	2389	1,500.00	
12-01-89	2458	1,500.00	
12-15-89	2475	2,304.42	Int to 11/30/89
01-01-90	2534	1,500.00	
02-01-90	2623	1,500.00	
02-15-90	2633	1,000.00	
03-01-90	2691	1,500.00	
04-01-90	2765	1,500.00	
05-24-90	2848	1,500.00	
06-01-90	2902	1,500.00	
06-06-90	2914	3,213.25	Int to 5/31/90
06-29-90	2970	1,500.00	
08-01-90	3047	1,500.00	
08-31-90	3117	1,500.00	
10-01-90	3185	1,500.00	
11-01-90	3258	1,500.00	
11-29-90	3285	3,551.08	Int to 11/5/90
12-06-90	3295	1,500.00	
01-02-91	3410	1,500.00	
02-25-91	3473	1,500.00	
03-08-91	3561	1,500.00	
05-17-91	3717	4,715.12	Int to 5/5/91
11-06-91	4143	5,263.30	Int to 11/5/91
05-22-92	4451	4,800.19	Int to 5/5/92
TOTAL AMOUNT DUE			
MAGNA BANK AS OF 5/5/92		\$85,023.19	

INTEREST ACCRUES AT \$27.95282/DAILY